

REMARKS / ARGUMENTS

Reconsideration of the application as amended is respectfully requested.

Before entry of the present amendment, Claims 1-3 were pending.

Figures 1 and 2 have been amended to include the reference numerals (10) and (90) in a separately attached proposed drawing amendment. Withdrawal of this objection is respectfully requested.

The examiner indicated an inconsistency and/or confusion as to the claim language, specifically as to whether the applicant is claiming the apparatus or the combination of the apparatus and the building. Claim 1 has been amended to clarify that the applicant is claiming the apparatus, and that the wall of the stairway (as part of the building) is necessary for mounting the apparatus for use.

In undertaking a determination of whether a reference, or a combination of references, renders a claim(s) obvious under 35 U.S.C. § 103(a), the examiner must show that the reference or combination of references teach or suggest every element of the claim(s) in question. MPEP § 706.02(j).

Claims 1 and 3 recite non-obvious elements that are patentably distinguishable over Sternberg and Buffaloe, including an emergency escape apparatus having:

- a ramp platform having a width of half of a stair tread and a length spanning from the upper landing to the lower landing of a stairway;
- a latch mounted to the stairway wall for impinging or releasing the platform;

- a plurality of hinges for affixing an edge of the platform to the wall; and
- a motion retarding reel mounted to an upper landing wall, the reel dischargeable in a linear manner and self-retracting, having a cable and a hook attachable to a wheelchair, said reel controlling ascent and descent along said ramp platform.

Sternberg is cited as disclosing every element except the latch, whereas Buffaloe is cited as disclosing the latch.

Sternberg fails to disclose a ramp platform spanning half the width of the stair tread, and a ramp platform that spans the distance from the upper landing to the lower landing of the stairway. Sternberg further fails to disclose a ramp platform having a plurality of hinges for mounting to an outward wall of the stairway. Sternberg discloses rollers (52) housed in notches (54), but the cited combination fails in operating as a hinge, as disclosed by Claim 1. The rollers and notches of Sternberg do not permit the upward pivoting of the ramp (18) toward the support surface (62), since the rollers are freely disassociated from the notches at the top side of the notches (see FIG. 2). Further, the rollers and notches of Sternberg are not capable of mounting to a wall for operation as a hinge for selectively impinging or deploying the platform as desired. Sternberg further fails to disclose a motion retarding reel mounted to an upper landing wall that is linearly dischargeable and self-retracting. Sternberg discloses an electrically controlled winch (32) (Column 4, Lines 2-7) that is used to *pull* the personal mobility vehicle *up* the ramp and into the "van" (14). The winch is not self-retracting (since it requires electric power for operation).

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Buffaloe fails to disclose a latch mounted to a stairway wall for impinging or deploying a ramp platform for emergency use in spanning a stairway.

The combination of Sternberg and Buffaloe fail to disclose every element of Claim 1 as required, thus Claim 1 is patentably distinguishable over Sternberg and Buffaloe. Claim 3 is patentably distinguishable over Sternberg and Buffaloe because of its dependency from Claim 1.

Claim 2 is likewise patentably distinguishable over Sternberg and Buffaloe because of its dependency from Claim 1.

Based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. § 103(a), in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument applicant wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. § 103(a), the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

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"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985). There is nothing in the prior art or the Examiners arguments that would suggest the desirability or obviousness of making a emergency escape apparatus having a ramp platform having a width of half of a stair tread and a length spanning from the upper landing to the lower landing of a stairway; a latch mounted to the stairway wall for impinging or releasing the platform; a plurality of hinges for affixing an edge of the platform to the wall; and a motion retarding reel mounted to an upper landing wall, the reel dischargeable in a linear manner and self-retracting, having a cable and a hook attachable to a wheelchair, said reel controlling ascent and descent along said ramp platform.. Uniroyal, Inc. v. Rudkki-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (Fed. Cir. 1988). The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (Fed. Cir. 1988); see also In re O'Farrell, 853 F.2d

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894, 7 USPQ 2d 1673 (Fed. Cir. 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (Fed. Cir. 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (Fed. Cir. 1988).

Therefore, in view of foregoing amendments and clarifications, the applicant submits that allowance of the present application and all remaining claims, as amended, is in order and a formal Notice of Allowance is respectfully requested at the earliest possible date.

Respectfully submitted,



Olen L. York, III, Esq.
Registration No. 53,814

The Law Offices of John D. Gugliotta
202 Delaware Building
137 South Main Street
Akron, OH 44308
(330) 253-5678
Facsimile (330) 253-6658